

**Before the
Federal Communications Commission
Washington, D.C. 20554**

<i>In the Matter of</i>)	
)	
<i>Connect America Fund</i>)	WC Docket No. 10-90
)	
<i>Universal Service Reform – Mobility Fund</i>)	WT Docket No. 10-208
)	
)	

**NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS MOTION
FOR AN EXTENSION OF THE MOBILITY FUND PHASE II CHALLENGE PROCESS TO
MARCH 15, 2019**

Pursuant to Rules 1.41¹ and 1.46² of the Federal Communications Commission’s (“FCC” or “Commission”) Rules of Practice and Procedure, 47 C.F.R. § 1.46 (2010), the National Association of Regulatory Utility Commissioners (NARUC), on behalf of its member commissions, respectfully files this motion requesting a second expansion of the Mobility Fund Phase II Challenge Process.

¹ 47 C.F.R. [§1.41](#) (2018), (“*Informal requests for Commission action*. Except where formal procedures are required under the provisions of this chapter, requests for action may be submitted informally. Requests should set forth clearly and concisely the facts relied upon, the relief sought, the statutory and/or regulatory provisions (if any) pursuant to which the request is filed and under which relief is sought, and the interest of the person submitting the request.”)

² 47 C.F.R. [§1.46](#) (2018), (“*Motions for extension of time*. (a) It is the policy of the Commission that extensions of time shall not be routinely granted . . . [and] shall be filed at least 7 days before the filing date . . . If a motion for extension of time in which to make filings in proceedings other than notice and comment rule making proceedings is filed less than 7 days prior to the filing day, the party filing the motion shall . . . orally notify other parties and Commission staff personnel responsible for acting on the motion that the motion has been (or is being) filed.”)

The first extension of the challenge window to November 26, 2018 was announced in an Order³ adopted on August 18, 2018 and released August 21, 2018 in the above captioned proceeding.

This August 2018 “Mobility Fund Phase II” (MF-II) Order extended the challenge window to “ensure that all interested parties have ample opportunity to conduct speed tests and submit speed test data for the areas they wish to challenge.”⁴ The FCC found that “[p]roviding this additional time . . . ultimately should result in a more efficient allocation of support funds, while still advancing the overall auction process to a timely conclusion, directing our limited funds to the unserved areas most in need, and completing the phase down of duplicative support that directs subsidies to areas already served by unsubsidized providers.”⁵

NARUC respectfully suggests that if efficiency and well targeted subsidies is the FCC’s goal, a further extension of the challenge window to March 15, 2019 is necessary.

In support of this request, NARUC states as follows:

NARUC’S INTEREST

NARUC, founded in 1889, is the national organization representing the Congress referenced from the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands. These commissions are charged with regulating the rates and conditions of service associated with the intrastate operations of telephone utilities.

³ *In the Matter(s) of the Connect America Fund*, WC Docket No. 10-90, *Universal Service Reform-Mobility Fund*, WT Docket NO. 10-208, Order, Notice of Proposed Rulemaking, and Memorandum Opinion and Order, FCC 18-124, 2018 WL 4016769, at page 1 (OHMSV Aug. 21, 2018), (MF-II Order), available online at: <https://ecfsapi.fcc.gov/file/082194314535/FCC-18-124A1.pdf>.

⁴ *Id.* at ¶8.

⁵ *Id.*

NARUC is recognized by Congress in several statutes⁶ and consistently by the Courts⁷ as well as a host of federal agencies,⁸ as the proper entity to represent the collective interests of State utility commissions. In the Federal Telecommunications Act,⁹ Congress references NARUC as “the national organization of the State commissions” responsible for economic and safety regulation of the intrastate operation of carriers and utilities.¹⁰

⁶ See 47 U.S.C. §410(c) (1971) (Congress designated NARUC to nominate members of Federal-State Joint Board to consider issues of common concern); See also 47 U.S.C. §254 (1996); See also *NARUC, et al. v. ICC*, 41 F.3d 721 (D.C. Cir 1994) (where this Court explains “Carriers, to get the cards, applied to (NARUC), an interstate umbrella organization that, as envisioned by Congress, played a role in drafting the regulations that the ICC issued to create the “bingo card” system).

⁷ See, e.g., *U.S. v. Southern Motor Carrier Rate Conference, Inc.*, 467 F. Supp. 471 (N.D. Ga. 1979), *aff’d* 672 F.2d 469 (5th Cir. 1982), *aff’d en banc on reh’g*, 702 F.2d 532 (5th Cir. 1983), *rev’d on other grounds*, 471 U.S. 48 (1985) (where the Supreme Court notes: “The District Court permitted (NARUC) to intervene as a defendant. Throughout this litigation, the NARUC has represented the interests of the Public Service Commission’s of those States in which the defendant rate bureaus operate.” 471 U.S. 52, n. 10. See also, *Indianapolis Power and Light Co. v. ICC*, 587 F.2d 1098 (7th Cir. 1982); *Washington Utilities and Transportation Commission v. FCC*, 513 F.2d 1142 (9th Cir. 1976); *Compare, NARUC v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007); *NARUC v. DOE*, 851 F.2d 1424, 1425 (D.C. Cir. 1988); *NARUC v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1227 (1985).

⁸ NRC Atomic Safety and Licensing Board *Memorandum and Order* (Granting Intervention to Petitioners and Denying Withdrawal Motion), LBP-10-11, *In the Matter of U.S. Department of Energy (High Level Waste Repository)* Docket No. 63-001-HLW; ASLBP No. 09-892-HLW-CABO4, *mimeo* at 31 (June 29, 2010) (“We agree with NARUC that, because state utility commissioners are responsible for protecting ratepayers’ interests and overseeing the operations of regulated electric utilities, these economic harms constitute its members’ injury-in-fact.”)

⁹ *Communications Act of 1934*, as amended by the *Telecommunications Act of 1996*, 47 U.S.C. §151 *et seq.*, Pub.L.No. 101-104, 110 Stat. 56 (1996) (West Supp. 1998) (“Act” or “1996 Act”).

¹⁰ See 47 U.S.C. § 410(c) (1971) (NARUC nominates members to FCC Joint Federal-State Boards which consider universal service, separations, and related concerns and provide formal recommendations that the FCC must act upon; *Cf.* 47 U.S.C. § 254 (1996) (describing functions of the Joint Federal-State Board on Universal Service). *Cf.* *NARUC, et al. v. ICC*, 41 F.3d 721 (D.C. Cir 1994).

In February 2017, the Commission adopted rules to move forward on a reverse auction that will direct up to \$4.53 billion of MF-II support over ten years to providers in geographic areas lacking unsubsidized 4G Long Term Evolution services.¹¹ The Commission also determined that it would compile a list of areas that were presumptively eligible for MF-II support and provide a limited timeframe before the auction during which interested parties could challenge areas that were not listed as presumptively eligible (i.e., “presumptively ineligible” areas).¹² In February 2018, the FCC published a map of areas presumptively eligible for MF-II support based on a one-time collection by the Commission of coverage data and subsidy data from the Universal Service Administrative Company.¹³

Some NARUC member commissions have a statutory requirement, and others a fiduciary responsibility to ensure that their respective States’ consumers have access to adequate mobile voice and broadband telecommunications technologies. As a result, several NARUC member commissions, including those in Mississippi and South Dakota are participating in the MF-II challenge process. According to the most recent November 2, 2018 *Mobility Fund Phase II Challenge Process Portal Update: October 2018*, [Public Notice DA 18-1124](#), NARUC’s members are among the 19 State government entities that have access to the Universal Service Administrator Company’s MF-II Challenge Process Portal to participate in the challenge process.

¹¹ *Connect America Fund; Universal Service Reform — Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 2152 (2017).

¹² *Id.* 32 FCC Rcd at 2175, 2181, ¶¶ 56, 66.

¹³ *Mobility Fund Phase II Initial Eligible Areas Map Available; Challenge Window Will Open March 29, 2018*, Public Notice, 33 FCC Rcd 2041 (WCB/WTB 2018)

As a result of that participation, last Wednesday, at NARUC's 130th Annual Meeting and Educational conference, the association passed the attached: *Resolution Urging the FCC to Extend and Reform Process for Creating the MF-II Eligibility Map*. That resolution specifically "urges the FCC to extend the MF-II challenge process until March 15, 2019, and to create an improved process in the interim that is transparent and will ensure that areas of the United States represented by NARUC members receive the universal support required to fulfill the purpose of the fund."

Good Cause Exists to Grant NARUC's Request.

An extension would result in a more efficient targeting of scarce taxpayer-funded subsidies. The FCC created the challenge process because it already recognized that the February 27, 2018 released map of areas eligible for MF-II funding was based on service provider-supplied propagation models that likely do not reflect the actual, on-the-ground consumer experience.

And, as many have commented since its release, it does not.¹⁴

¹⁴ See, *Senator Wicker Raises Concerns With Mobility Fund Map* Press Release (October 4, 2018). ("Wicker asked Grant Spellmeyer, the current Vice President of Federal Affairs and Public Policy for U.S. Cellular Corporation, about his company's efforts to challenge the FCC's wireless coverage map, which purportedly represents areas with 4G LTE service coverage. After millions of dollars spent and millions of different signal strength readings, Spellmeyer said that his company had only tested the accuracy of the FCC's coverage map in 3 percent of the company's service footprint. "We will absolutely not be able to get to all the areas that we would like to get to," Spellmeyer said. "I've got twenty [signal strength] drive test teams in the field in a dozen states right now and we're going as fast we can, but we're going to run out of time." Spellmeyer said he believes it is important to get the map correct, because it will govern the next 10 years of FCC policy regarding rural broadband support. "It is going to be 2030 before we can go back and bring some of these places up to five megabits per second at a time when, by then, 5G will be running around urban areas at a gigabit a second," Spellmeyer said. "It's going to crack open a digital divide that's far worse than what we have seen previously.") online at: <https://www.wicker.senate.gov/public/index.cfm/2018/10/wicker-raises-concerns-with-mobility-fund-map> ; See also, Eggerton, John, *Sen. Tester: FCC's Broadband Maps 'Stink'* Multichannel News (August 16, 2018) ("Tester [suggested] that without good maps, a lot of money would be unnecessarily spent.") (emphasis added) online at: <https://www.multichannel.com/news/sen-tester-fccs-broadband-maps-stink>.

The challenge process was intended to compensate for this inaccuracy by allowing interested parties to dispute maps with speed test measurements. According to the most recent update, over 8 million speed tests have been submitted thus far during the course of challenge process.

Yet the map still lacks needed accuracy.

Because of limited staff and technology resources, States need additional time to conduct the necessary State-wide testing. Indeed, one NARUC member commission, recognizing how badly the current map misrepresents coverage data in the state, organized task forces in each of 33 counties composed of ordinary citizens, Sheriff's offices and fire coordinators to conduct speed texts. Despite these extensive efforts, that State still lacks the resources to complete needed surveys and supply crucial data via the FCC's portal in time to meet the current November 26 deadline.

Moreover, there remained unresolved glitches in the FCC Speed Test App, particularly as it relates to phones operating on iOS software. One NARUC member contends that in areas most in need – those with no signal at all – iPhones using the recommended speed application, at least initially, were not recording *any* test results (not reporting the lack of any signal/zero service). If this problem is (or was initially) widespread much of the data collected thus far is skewed towards the minimally served and necessarily excludes those areas most in need.

Another Short Extension will Not Cause Undue Delay or Prejudice Any Party.

Given that rural consumers will bear the consequences of an inaccurate map for the next decade, the addition of another few months to the Challenge window is relatively insignificant. As pointed out, *supra*, any concerns should be offset by prospect of improving the map and the testing procedures so as to target scarce subsidies more efficiently – where they are most needed.

Granting the requested extension will serve the public interest by ensuring a better or at least more complete record for FCC Commissioners consideration. In prior cases, the FCC has found that, while it does not routinely grant extensions of time, as stated in 47 C.F.R. § 1.46(a), “it has done so when necessary to ensure that the Commission receives full and informed responses and that affected parties have a meaningful opportunity to develop a complete record for the Commission’s consideration.”¹⁵

NARUC respectfully submits that here, too, an extension request is necessary to ensure that the Commission receives full and informed responses and that industry-wide affected parties – including NARUC’s member commissions - have a meaningful opportunity to develop a complete record for the Commission’s consideration. The time frame needs to be adjusted to fully reflect the expanded scope of the State-wide task facing State policy-makers. Providing this additional time can only result in a more efficient allocation of support funds by directing the limited funds to the unserved areas most in need. Indeed better data is needed if the FCC is interested in phasing down “duplicative support that directs subsidies to areas already served by unsubsidized providers.”¹⁶

¹⁵ *In the Matter of Facilitating the Deployment of Text-to-911 and other Next Generation 911 Applications, Framework for next Generation 911 Deployment*, PS Docket Nos. 11-153, 10-255, *Order*, DA 11-2049, ¶4 (released Dec. 21, 2011 (citations omitted). (citing *In the Matter of Wireless E911 Location Accuracy Requirements*, PS Docket No. 07-114, WC Docket 05-196, *Order*, 25 FCC Rcd 16879, 16880 ¶¶ 3-5 (PSHSB 2010) (granting 14-day extension to permit various Communications Security, Reliability, and Interoperability Council (CSRIC) working groups to develop and finalize recommendations relating to E911 and NG911); *Wireless Telecommunications Bureau Grants Extension of Time to File Reply Comments on Commercial Mobile Radio Services Market Competition, Public Notice*, WT Docket No. 09-66, DA 09-1419 (WTB rel. June 24, 2009) (granting 14-day extension for “development of a complete record on the issues.”)).

¹⁶ *MF-II Order* at ¶8.

IV. CONCLUSION

Accordingly, because of the critical need to increase the accuracy of the map that the FCC is using to target scarce subsidies and because of the clear need for additional time for stakeholders to provide additional speed survey data to target unserved areas in many States, NARUC respectfully requests the FCC grant the requested extension of the Challenge Process Window to March 15, 2019.

Respectfully Submitted,

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May 16, 2018

Appendix A

Resolution Urging the FCC to Extend and Reform Process for Creating the MF-II Eligibility Map

Whereas the National Association of Regulatory Utility Commissioners (“NARUC”), by and through its members, has an interest in ensuring that the States it represents have access to adequate mobile voice and broadband telecommunications technologies;

Whereas in February 2017, the Federal Communications Commission (“FCC”) adopted rules to provide universal service funding through its Mobility Fund Phase II (“MF-II”) in the amount of \$4.53 billion over a term of ten years to provide ongoing support for the provision of 4G LTE service in areas lacking adequate mobile voice and broadband coverage absent subsidies;

Whereas on February 27, 2018, the FCC published its initial map of areas eligible for MF-II funding based on service provider-supplied propagation models that the FCC admits do not necessarily reflect the actual, on-the-ground consumer experience;

Whereas based on the understanding that actual, on-the-ground consumer experience may not be represented in the initial map, the FCC established a challenge process allowing interested parties to dispute maps with speed test measurements, with an initial challenge window of March 29, 2018, to August 27, 2018;

Whereas the FCC limits challengers to mobile service providers, other parties who obtain a waiver, and State, local and tribal government entities, including NARUC member State utility commissions;

Whereas the FCC does not appear to have anticipated the large number of challenges brought by certain NARUC members and others who rely on the recommended FCC Speed Test Cellular Telephone App and do not have the resources, human or technological, available to service providers, requiring an extension of the challenge period to November 26, 2018;

Whereas certain NARUC members have discovered technological glitches in the FCC Speed Test App, particularly as it relates to phones operating on iOS software; found it difficult to supply the required numbers of tests given the lack of human resources; dealt with overwhelmed FCC employees who are under immense pressure to answer a large volume of questions; and found the entire FCC process to be underdeveloped and inefficient, leading to a lack of trust on the part of these NARUC

members that the final eligibility maps will accurately reflect the need for service in the poorest parts of the nation; *now therefore be it*

Resolved that the National Association of Regulatory Utility Commissioners, as convened at its 130th Annual Meeting and Education Conference in Orlando, Florida, urges the FCC to extend the MF-II challenge process until March 15, 2019, and to create an improved process in the interim that is transparent and will ensure that areas of the United States represented by NARUC members receive the universal support required to fulfill the purpose of the fund.

Sponsored by the Committees on Consumers and the Public Interest and on Telecommunications

Recommended by the NARUC Board of Directors on November 13, 2018

Adopted by the NARUC Committee of the Whole on November 14, 2018